



Implementation of the State of Law Principles from the Constitutional Law Perspective: A Case Study of Legislative Aspects in Law Enforcement in Indonesia

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ARTICLE INFO

Article history:

Received 18 January 2024

Revised 23 February 2024

Accepted 28 February 2024

Available online

<https://talenta.usu.ac.id/Mahadi>

E-ISSN: 2964-7185

P-ISSN: 3025-3365

How to cite:

Pakpahan, Z. A., Yasmin, A. S., Safitri, I.T., Nainggolan, E. S. C., Nasution, T. A. M. (2024). Implementation of the State of Law Principles from the Constitutional Law Perspective: A Case Study of Legislative Aspects in Law Enforcement in Indonesia. Mahadi: Indonesia Journal of Law, 3(01), 16-22.

ABSTRACT

The Fourth Amendment to the 1945 Constitution of the Republic of Indonesia, enacted in 2002, officially established the concept of the State of Law, or "Rechtsstaat," which was previously only mentioned in the Explanation of the 1945 Constitution. This concept was solidified in Article 1, paragraph (3), which states, "The State of Indonesia is a State of law." This study utilizes a normative legal research method, focusing on document analysis using various secondary data sources such as legal literature, court decisions, legal doctrines, and expert opinions. The research's analysis centers on the implementation of the rule of law principles within the constitutional framework, with a specific focus on legislation and law enforcement in Indonesia, particularly in the legislative domain. Despite efforts to reform legislation, there are still deficiencies in the legislative process that may hinder the effective implementation of the rule of law principles. Some challenges include inconsistencies in laws, the intricate nature of the legislative process, and potential political interventions that could compromise the independence of legislative bodies.

Keyword: Implementation, Principles, State, Law, Legislation.

ABSTRAK

Amandemen Keempat terhadap Undang-Undang Dasar 1945 Republik Indonesia pada tahun 2002 mengukuhkan konsep Negara Hukum atau "Rechtsstaat," yang sebelumnya hanya ditemukan dalam Penjelasan Undang-Undang Dasar 1945. Konsep ini diformulasikan dengan tegas dalam Pasal 1, ayat (3), yang menyatakan, "Negara Indonesia adalah Negara hukum." Penelitian ini menggunakan metode penelitian hukum normatif, dengan melakukan studi dokumen menggunakan berbagai sumber data sekunder seperti undang-undang, putusan pengadilan, teori hukum, dan pendapat para pakar. Analisis dalam penelitian ini berfokus pada implementasi prinsip-prinsip negara hukum dalam kerangka regulasi konstitusional, dengan studi kasus tentang legislasi dan penegakan hukum di Indonesia. Penekanan utamanya adalah pada aspek legislasi. Meskipun telah dilakukan reformasi legislasi, masih terdapat kekurangan dalam proses pembuatan undang-undang yang dapat mempengaruhi efektivitas prinsip-prinsip negara hukum. Beberapa hambatan meliputi inkonsistensi antara undang-undang, kompleksitas proses legislasi, dan campur tangan politik yang dapat mengganggu independensi lembaga legislatif.

Keyword: Implementasi, Prinsip, Negara, Hukum, Legislasi.



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<http://doi.org/10.26594/register.v6i1.idarticle>

1. Introduction

In the context of revisions to the 1945 Constitution of the Republic of Indonesia, specifically the Fourth Amendment in 2002, the concept of the Rule of Law or "Rechtsstaat," previously only implied in the Explanation of the 1945 Constitution, was explicitly stated in Article 1, paragraph (3), which declares,

"Indonesia is a state of law." The concept of the Rule of Law emphasizes that law should be the dominant force in the state's dynamics, rather than politics or economics. This underscores the idea that government should be governed by laws and not by individuals. This principle is often referred to as 'the rule of law, not of man.' The essence of government lies in the legal system itself, not in individuals who merely carry out the regulations set by the system.¹

When considering the concept of the rule of law, it signifies more than just rejecting a Power State (Machtstaat); it also entails recognizing the supremacy of law and the constitution, adhering to the principle of separation and limitation of powers as outlined in the constitutional system, ensuring human rights are guaranteed in the constitution, upholding an independent and impartial judiciary that ensures equality of all citizens under the law, and providing justice for all, including protection against abuse of authority by those in power.

This piece expands upon previous works such as Christian Imanuel Montolalu, et al.'s "Implementation of the Rule of Law Principle in Governance and Human Rights in Indonesia" and Wahdah's "Application of the Rule of Law in Legal Practice in Indonesia." It specifically delves into the legislative aspect, which is the primary focus of the analysis. Despite legislative reforms in Indonesia, there are still shortcomings in the legislative process that can impact the effectiveness of the rule of law principles. Some challenges include inconsistencies between laws, the complexity of the legislative process, and political interference that can undermine the independence of legislative institutions. Therefore, a comprehensive evaluation of the legislative process and legal policies is necessary to assess the implementation of the rule of law principle in the legislative aspect.²

Law enforcement is a critical element in achieving an effective rule of law. Ensuring fair sentencing, addressing legal violations, and continuing judicial reform are key aspects. Case studies on law enforcement in Indonesia may focus on evaluating how corruption, human rights violations, and other criminal cases are handled. The roles of law enforcement agencies, such as the police and prosecutors, and the independence of the judicial system are areas that require further research.³

2. Method

The study utilizes the normative legal method, emphasizing the analysis of legal norms to understand legal issues deeply. It is analytical-descriptive and relies on library research for primary data. Qualitative analysis is used to examine the primary data, and conclusions are drawn through logical deductive reasoning to achieve the research goals.⁴

3. Discussion

3.1 Implementation of the State of Law Principles from The Constitutional Law Perspective: A Case Study of Legislative Aspects In Law Enforcement in Indonesia

The term "Indonesian rule of law" is often used interchangeably with "Rechtsstaat" and "rule of law." Examination of several constitutions in Indonesia shows a consistent emphasis on the nation as a legal state. The 1945 Constitution, before amendment, used the term "a state based on law (rechtsstaat)." To emphasize Indonesia's unique characteristics, the term "rule of law" is also identified by adding the attribute of Pancasila, often referred to as the "rule of law of Pancasila."⁵

The principles of the rule of law that emerged in the 19th century tended to favor the concept of a formal rule of law, specifically the definition of a rule of law in a narrow sense. This principle confines the rule of law to a limited space and role, conceptualizing law as a system for governing state power based on

¹Jimly Asshiddiqie, *Negara Hukum (Rule of Law): Konsep, Teori, dan Implementasi di Indonesia*, Jakarta: Alma Mater, 2010, p. 57.

²JS Pranata et al., 'Legal Reform in Indonesia: A Review of the Law Making Process', *J. Law and Development.*, vol. 2, no. 1, pp. 45-60.

³AB Wibowo et al., 'Challenges of Law Enforcement in Indonesia: Case Study of Corruption Cases', *J. Peelit. Huk.*, vol. 5, no. 2, pp. 112-130.

⁴Peter Mahmud Marzuki, *Penelitian Hukum*, Jakarta: Kencana, 2006, p. 141.

⁵Haposan Siallagan, *Penerapan Prinsip Negara Hukum di Indonesia*, *Sociohumanities Journal* 2016, Vol. 1, No. 3, p. 135.

legal principles. The government and its institutions, in exercising their duties and authority, are bound by the law. The government's role is limited and passive. However, in the 20th century, the concept of the rule of law evolved towards a material sense, aiming to expand the government's role in response to the demands and dynamics of contemporary developments.⁶ This can be observed through the aspects studied, which will be elaborated in the examination through legal studies.

3.1.1 *There is Law Enforcement Through Review of Legislative Regulations*

One consequence of the hierarchical structure of regulatory law is that laws at a lower level must not conflict with laws at a higher level. When a lower-level regulation contradicts a higher-level regulation, this can be addressed through mechanisms such as administrative or judicial reviews. There are two types of reviews: formal and substantive. Formal review examines whether the government agency has the authority to enact the regulation, while substantive review examines whether the content of the lower-level regulation differs from that of the higher-level regulation, which is not in line with its position.

3.1.2 *There is Protection of Human Rights*

Real indicators of progress include the establishment of state institutions dedicated to safeguarding human rights, such as the Human Rights Protection Commission, Women's Protection Commission, Child Protection Commission, and Witness and Victim Protection Commission. Furthermore, the Indonesian government has initiated legal reforms to enhance human rights protection. Through laws like Law No. 39 of 1999 concerning Human Rights and Law No. 26 of 2000 concerning Human Rights Courts, Indonesian citizens enjoy improved human rights protection. Despite these advancements, there are still numerous challenges that the Indonesian government must address, particularly in the implementation of these regulations, where enforcement by law enforcement agencies remains inadequate.

3.1.3 *There is a Separation of Power Through a Check and Balance System*

According to John Locke's "Two Treatises of Civil Government," the concept of horizontal separation of powers originated. Locke proposed dividing a country's power into three branches: legislative power for making laws, executive power for implementing laws, and federative power for managing international relations. Locke prioritized the federative function, viewing the separation of powers from the perspective of internal and external relations with other countries. He considered the judiciary function as part of the executive function related to law enforcement, activating the defense function only when diplomatic efforts fail.

In contrast, Montesquieu emphasized the judiciary function in his theory of the separation of powers. He viewed the separation of powers from the perspective of fundamental rights, considering the functions of defense and diplomacy as part of the executive function, thereby eliminating the need for strict separation. Unlike Locke, Montesquieu did not prioritize the federative function and emphasized the judiciary's power as a crucial aspect of the separation of powers.

3.1.4 *The existence of limitations on power within the state and equality before the law*

The continental European rule of law principle, founded by Friedrich Julius Stahl in the 19th century, emphasizes the separation and distribution of powers to guarantee human rights. Similarly, the principle of the separation of powers, which is one of the principles of the Anglo-Saxon legal state (rule of law) established by Albert Venn Dicey in 1885, is aimed at guaranteeing human rights.⁷

Jimly Asshiddiqie says that these restrictions were enforced by law and later became a fundamental idea of modern constitutionalism. The consensus that guarantees the upholding of constitutionalism in modern times is generally understood to rely on three elements of agreement (consensus), including:⁸

1. Agreement about objective or ambition together (objective general something public, or reception general to philosophy government Which The same);
2. Agreement about supremacy law as base government or maintenance country (foundation of government);

⁶Indra Perdana, Prinsip Negara Hukum dalam Kehidupan sebagai Warga, Jurnal Warta Dharmawangsa, Jurnal Warta Dharmawangsa, 2016, Vol.1, No. 2, p. 127.

⁷Miriam Budiardjo, Dasar-Dasar Ilmu Politik, Jakarta: PT. Gramedia Pustaka Utama, 2008, p.58.

⁸Jimly Asshiddiqie, Pengantar Hukum Tata Negara, Jakarta: RajaGrafindo Persada, 2015, p. 229.

3. Agreement about form institution and system method constitutional (form institution And procedure).

The concept of equality, which applies uniformly to all individuals within the legal and governmental frameworks, is acknowledged both normatively and empirically. Discriminatory attitudes and actions are prohibited under the principle of equality, except for specific and temporary measures known as affirmative action. These measures are designed to promote and expedite the progress of certain segments of society or citizens to achieve the same level of development as more advanced groups. Affirmative action can be applied to certain community groups, such as isolated tribal communities or specific traditional legal community groups experiencing backward conditions, without being considered discriminatory. Currently, certain national groups, such as women and neglected children, are eligible for special and non-discriminatory treatment.

3.1.5 *The existence of Administrative Justice*

Friedrich Julius Staal proposed the concept of resolving conflicts in the 19th century, which led to the creation of state administrative courts tasked with overseeing arbitrary state actions. Administrative justice is regarded as a specialized form of court, indicating that it is exclusively empowered to settle disputes arising in the realm of administration and personnel, or conflicts between administrative officials and individuals or legal entities due to the issuance or non-issuance of decisions.⁹

The principle of the rule of law in Indonesia is stated in Article 1, paragraph (3) of the 1945 Constitution, affirming Indonesia as a state based on law. This principle must be practiced for the continuity of society, nation, and state. It should be evident not only in people's lives but also in the government's administration, including legislative, executive, and judicial institutions. Implementing the rule of law in Indonesia does not necessarily require direct reliance on *rechtsstaat* or the rule of law principles. Achieving the envisioned rule of law in the 1945 Constitution is possible if the entire government or state administration process is based on the constitution's rules.

The principles of the Indonesian rule of law are reflected in various laws, including the 1945 Constitution, which emphasizes the rule of law's supremacy, protection of human rights, and the balance of power among state institutions. Implementation involves creating and enforcing fair, transparent, and just laws. Additionally, institutions like the Constitutional Court ensure that regulations align with the rule of law's fundamental values. Indonesia can improve its application of legal principles in several areas, such as amending the 1945 Constitution, formulating laws, supervising the Constitutional Court, enforcing laws, protecting human rights, and involving the community more. By focusing on these aspects, Indonesia aims to realize the supremacy of law within its national regulatory framework.

3.2 *The Effects of Applying the Principles of the Rule of Law on Justice as Law Enforcement*

The aim of criminal prosecution is to enhance social order and legal stability by regulating the functions, responsibilities, and competencies of law enforcement institutions according to their respective fields and fostering a cooperative system that supports these objectives. The level of societal development influences the model of law enforcement, with modern, rational, highly specialized societies having complex and bureaucratic law enforcement organizations.

Justice serves as the foundation for orderly life in civilized societies. The law enables every member of society and state administrators to maintain social cohesion and achieve coexistence goals, preventing actions that could disrupt legal order. Failure to comply with orders or violations of prohibitions would constitute an injustice, disrupting public order.

The concept of justice in law encompasses several aspects. It involves equal and objective treatment of all individuals, without discrimination or unfair exceptions. Everyone has the right to equal legal protection and to defend themselves in court. Legal decisions must be based on valid evidence and a fair process, with judges or law enforcers acting neutrally and impartially. Additionally, justice in law includes restorative aspects, aiming to repair harm caused by law violations, compensate affected parties, and restore

⁹Putera Astomo, Prinsip-Prinsip Negara Hukum Indonesia Dalam UUD NRI Tahun 1945, West Sulawesi University Journal, Vol.2, No.2, 2019, p. 215.

peace in society. This principle acknowledges that justice entails not just punishing offenders but also repairing harm and restoring relationships.¹⁰

Therefore, implementing the rule of law principles not only establishes a fair legal system but also fosters public trust in law enforcement institutions. This aspect aims to establish a legal system aligned with the rule of law principles to uphold the supremacy of law and safeguard citizens' rights. The principle of justice in law frequently allows the public to request fair treatment from law enforcement and the government. However, justice is sometimes misconstrued and manipulated, resulting in adverse effects that ultimately harm other communities.

Then Hart argued that the general principles of justice in law are equality and inequality.¹¹ This means that similar things are treated in similar ways, and different things are treated differently. This view holds that equal individuals should be treated the same as other individuals. Equality has to do with treating them differently and treating similar things the same way.

Justice in a legal context is closely related to the meaning of legality. It is said to be fair if the regulations made apply equally, without legal discrimination, and are applied to all cases where, according to the regulations, they must be applied. The legal legality of the regulations in force has the same implications for all actions carried out with the principle of referring to the content of the action itself. It is said to be unfair if the application of the regulations is not consistent for the same action in different places.¹²

When law enforcement agencies abide by the principles of the rule of law, it significantly enhances public trust in the fairness of the justice system. Citizens are more likely to trust and cooperate with law enforcement authorities when they believe that their rights will be protected and justice will be served. By steadfastly adhering to the principles of the rule of law, these agencies also cultivate a culture of compliance with legal norms and standards. This creates an environment where individuals and organizations respect the law, thus promoting the maintenance of societal order and stability. Essentially, the application of the rule of law principles in law enforcement not only advances justice, accountability, and the protection of rights within society but also strengthens the legal framework, enhances public confidence in law enforcement entities, and upholds the rule of law itself.

3.3 Executive, Legislative and Judicial Powers in the Context of the Principles of the Rule of Law

The distribution of power is a crucial aspect of constructing a state administration system. A balanced distribution of power among institutions ensures checks and balances, preventing any one entity from wielding excessive authority and potentially deviating from its intended purpose. Historical governance experiences illustrate that concentrating power in a single entity or institution can lead to deviations, prompting mass movements for change.

The issue of dividing or separating powers has long been a focus of political thought. In the 19th century, the concept of limiting government authority emerged through the creation of constitutions, both written and unwritten. These documents set limits on governmental power, safeguarded political rights, and established checks and balances among different branches of government. This restriction of state power through constitutional means is known as constitutionalism. Constitutionalism subsequently gave rise to the concepts of *Rechtsstaat* (by Continental European legal experts) or the rule of law (by Anglo-Saxon legal experts), which in Indonesia is translated as the Rule of Law.¹³

The first branch is the Executive Power, which pertains to administrative bodies tasked with enforcing the law. Presently, executive power is vested in the head of government, namely the president, the vice president, and cabinet members. Under this definition, the president is a governmental entity possessing executive power. Executive authority encompasses the power delegated to the president and their ministers. In a broader context, executive power also includes civil servants and military personnel. Hence, the executive institution can be referred to simply as the government.

¹⁰Maksum Rangkuti (2023 November 21), *Apa Itu Hukum?*, UMSU Faculty of Law Journal, Vol. 2, No. 1, 2023, p. 112-116.

¹¹Yusnus Suhardi Ruman, *Keadilan Hukum dan Penerapannya dalam Pengadilan*, Humanities, Vol. 3, No. 2, October 2012, p. 348.

¹²Hayat, 'Justice as a Principle of the Rule of Law: A Theoretical Review in the Concept of Democracy'. *Padjajaran Legal Science Journal*, Volume 2, Number 2, 2015, p. 392.

¹³Zulkarnain Ridlwan, *Negara Hukum Kebalikan dari Nachtwacherstaat*, *Fiat Justitia Journal of Legal Studies*, Vol. 5, No.2, August 2012. Pg. 142

The primary objective of the executive branch is to oversee the functioning of the government and efficiently manage the country. Some specific goals of the executive branch include:

- a) Implementation of policies: The executive branch is responsible for implementing established government policies, ensuring their proper application, and achieving the desired results.
- b) Law enforcement: The executive branch plays an important role in maintaining law and order in the country, enforcing laws, opposing violations, and ensuring social stability.
- c) Development and economy: The executive branch is responsible for economic development programs to increase the well-being of society.
- d) Foreign relations: The executive branch also plays a role in managing international relations, representing the country in international agreements, diplomatic negotiations, and participating in global and regional affairs.

The second branch is the Legislative Power, which represents the sovereign people by making decisions and acts as a body to reflect the people's sovereignty. In Indonesia, the legislative institution is one of the three branches of government, alongside the executive and judiciary. The legislative branch, known as the Congress, is responsible for creating the constitution, establishing the national budget, and overseeing government policies. Legislative power is vested in representatives, and it typically involves three primary functions: legislative, supervisory, and budgetary.

The legislative function encompasses activities such as proposing legislation, deliberating draft laws, approving law ratifications, and providing binding approval for international agreements. Lastly, the third branch is the Judicial Power, which plays a crucial role in ensuring justice and upholding the rule of law. The judicial institution interprets laws, resolves disputes, and makes impartial decisions based on evidence. It operates independently of the executive and legislative branches, responsible for adjudicating legal disputes, interpreting laws, and penalizing violators.

According to the 1945 Constitution, judicial power in Indonesia is exercised by the Supreme Court, subordinate judicial bodies, and the Constitutional Court. Jimly Asshiddiqie, in his book "Introduction to Constitutional Law," mentions that the Indonesian court system includes:

- a) District Court (PN) and High Court (PT) within the general justice environment;
- b) Religious Courts (PA) and High Religious Courts (PTA) within the religious justice environment;
- c) State Administrative Court (PTUN) and State Administrative High Court within the state administrative court environment; And
- d) Military Court (PM) and High Military Court within the military justice environment.

Apart from that, there are also known special courts which are permanent or ad hoc, including the Human Rights Court, Corruption Crimes Court, Commercial Court, Children's Court, Industrial Labor Relations Court, and others.¹⁴ The balance between the executive, legislative, and judicial institutions is a fundamental principle of the country's legal system. These principles are intended to prevent the abuse of power, allowing each branch of the government to function effectively without jeopardizing individual rights or democratic principles. The balance between the executive, legislative, and judicial institutions is a central aspect in safeguarding the supremacy of the law. This principle reflects the concept of the separation of powers, where each branch of the government has its role, and none is sufficient on its own.

The legislative body acts as the legislature and is responsible for enforcing, confirming, and amending the Constitution. Conversely, the executive branch enforces laws and implements government policies. The judiciary, through the justice system, plays a vital role in law enforcement, verifying the continuity of government policies, and ensuring justice. The principle of checks and balances provides a means of supervision between government institutions.

The legislature can control the executive by either approving or rejecting proposed laws. Conversely, the executive can veto laws, and the judiciary can review the constitutionality of laws and policies. Government accountability and transparency, along with public participation and independent oversight, support the

¹⁴Jimly Asshiddiqie, *Pengantar Hukum Tata Negara*, Jakarta: RajaGrafindo Persada, 2015, p. 315.

principle of the rule of law. It is essential for the government to understand that it is not sufficient to be accountable to the public; it must also answer to the public's needs and expectations.

The balance of power among the executive, legislative, and judicial branches is crucial in building a strong and fair legal system. This balance prevents the abuse of power, ensures the protection of individual rights, and upholds democratic principles. Ideally, each branch operates independently but oversees and balances the others. The legislature creates and amends laws, the executive enforces laws and policies, and the judiciary upholds the law and ensures justice. This balance ensures that no branch has excessive power and that all work in the public interest without infringing on individual rights or democratic principles.

4. Conclusion

In Indonesia, an analysis of the implementation of the rule of law demonstrates significant advancements in legislation and law enforcement. The application of constitutional principles indicates a commitment to establishing a legal framework that is just, transparent, and democratic. This analysis underscores several key areas that require evaluation and enhancement. While progress has been made, there is still room for improvement in Indonesia's constitutional legal system. Enhancing the foundation of the rule of law necessitates greater engagement from the government, the legislature, and law enforcement. Collaboration with civil society, human rights advocates, and other public stakeholders is also vital to advance Indonesia toward a more inclusive, just, and rule of law-based legal system.

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